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September 1, 2004

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

**Re: Retention by Broadcasters of Program Recordings
(MB Docket No. 04-232)**

Dear Commissioner Copps:

On behalf of the National Religious Broadcasters, I write to express support for the Commission's recent actions in enforcing the agency's broadcast indecency regulations. The 1,600 member organizations within NRB, including the licensees of 959 radio and television stations, have long been concerned about programming trends in the wider broadcasting industry that undermine basic morality and thereby inflict grave harm upon our nation, especially its young people. We appreciate the efforts that you and your fellow Commissioners have made in setting clear and enforceable standards precluding the airing of indecent material during hours when children are most likely to be in the audience.

NRB also notes with interest the opening of the Commission's new rulemaking proceeding in this area. The agency proposes to enhance its indecency enforcement processes by requiring broadcasters to retain recordings of their programming for some as-yet unspecified, but short, period of time. The Notice of Proposed Rulemaking indicates that having access to tapes or electronic recordings would assist the FCC's Enforcement Bureau in evaluating allegations of objectionable programming.

We appreciate the practical difficulties that the Commission faces in enforcing its indecency restrictions, including the need to respect the restraints placed on the agency by the First Amendment. NRB is concerned, however, that the current proposal to require all stations to keep and maintain recordings of their programming is an overbroad, albeit well intentioned, response to the problem. As discussed below, we suggest that the Commission tailor its initial proposal to more specifically address the sources of indecent programming. Doing so should help to bolster the agency's enforcement efforts without unduly

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burdening the thousands of licensees who consistently and faithfully adhere to the Commission's indecency standards.

As it currently stands, the recording retention proposal would place a particularly heavy financial and operational burden on smaller broadcasters, both religious and secular. The vast majority of broadcasters have never been the subject of an indecency complaint, much less a finding that they have violated the FCC rules.

For example, one NRB member that would struggle mightily to shoulder the new recording requirement is the Maumee Valley Broadcasting Association, a small nonprofit entity that has operated WPOS-FM, licensed to Holland, Ohio, for more than 40 years. During the decades that this single-station licensee has served the Toledo area, it has, of course, never aired programming that would even remotely give rise to an indecency complaint. The WPOS staff—which consists of three full-time employees and four part-time workers—has made it their mission to joyfully proclaim the good news of the Gospel over the airwaves through inspiring music and talk programs produced locally or provided by national distributors.

Nonetheless, General Manager Rick Waldron estimates that to meet the proposed retention requirement, his small operation might have to devote as much as 4 percent of its annual budget to archive just its own original programming. According to Rick:

“A new computer with the capacity to hold something like is being discussed, with the durability to run 24/7 for weeks at a time, and a software package with the search capability to find a particular broadcast would, according to our computer consultant, run close to \$6000. A part-time employee (10 hours a week at \$12.00 an hour, going rate in NW Ohio) would be close to \$7000 annually. One unknown cost is the expense in retrieving a broadcast for a listener. Would it be enough to burn a CD or would we be forced to hire the equivalent of a court reporter to generate a transcript? With a stretched-thin annual budget, this proposed regulation could cost WPOS up to 3-4% of its annual budget to archive programming that is original to WPOS 43 hours a week. The balance of our 24/7 broadcasts are fed to us by Moody Broadcasting, Focus on the Family, Ambassador Advertising, and a myriad of other national programmers.”

To avert the overbroad imposition of a recording/archiving burden on all broadcasters, NRB suggests that the FCC more narrowly tailor its retention proposal. The Commission's records reflect that only a handful of the 12,000

existing broadcast stations have prompted indecency complaints, and of that small group, several have received multiple complaints. [REDACTED]

[REDACTED]

Establishing this trigger for the requirement would ensure that only those broadcasters who have been subject to FCC's enforcement processes and found seriously wanting would bear the extra costs of demonstrating compliance through recording retention. It also would provide the FCC with an effective mechanism for overseeing ongoing adherence to the rules by those who have not shown a serious commitment to maintaining the programming standards expected of all licensees. We believe that it would be appropriate in such cases to set a finite limit on the retention requirement, perhaps on the order of five years or through the course of the license term, whichever is greater.

NRB stands ready to work collaboratively with the FCC in strengthening its methods for adjudicating indecency complaints. We hope that you find our suggestion useful, and we would be pleased to discuss it with you and staff at further length.

Very truly yours,

A handwritten signature in black ink, appearing to read "Frank Wright", with a stylized flourish at the end.

Frank Wright, Ph.D.
President